

ASSEMBLY BILL

No. 111

Introduced by Assembly Member Corbett

January 13, 2003

An act to amend Section 3044 of the Family Code, and to amend Section 273a of, and to add Title 10.5a (commencing with Section 14145) to Part 4 of the Penal Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 111, as introduced, Corbett. Child abuse: mental suffering.

(1) Existing law establishes a rebuttable presumption that the award of sole or joint physical or legal custody to a person who has, within the past 5 years, perpetrated domestic violence against the other party seeking custody, the child, or the child's siblings is detrimental to the best interests of the child.

This bill would expand that presumption to include the perpetration of emotional abuse, as defined, against the child or the child's siblings.

(2) Existing law makes it either a misdemeanor or a felony, punishable as specified, to willfully cause or permit any child to suffer, or to inflict thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully cause or permit the person or health of that child to be injured, or willfully cause or permit that child to be placed in a situation where his or her person or health is endangered, under circumstances or conditions likely to produce great bodily harm or death.

This bill would further provide that willfully causing or permitting a child to suffer, or inflicting upon unjustifiable mental suffering on a child, constitutes a violation of this provision regardless of whether the

act or acts causing the mental suffering also cause physical injury or harm to the child.

(3) Existing law establishes statewide programs for community violence prevention and conflict resolution, and encourages the creation of county task forces to prevent violent crimes against women.

This bill would encourage local law enforcement agencies to develop projects of collaboration between law enforcement officers and mental health professionals in order to address the needs of children and families exposed to violence, as specified, to be funded using grant funding, as available, or available resources within the existing budget of the law enforcement agency.

(4) The bill would also declare the findings and interest of the Legislature with regard to the provisions of the bill.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature hereby finds and declares
2 all of the following:
3 (1) The emotional abuse of children can cause long-term
4 damage to those children, as serious as the damage done by
5 physical abuse.
6 (2) Emotional abuse can permanently damage a child's self
7 esteem and social competence. Emotional abuse can include
8 humiliating or ridiculing a child, rejecting or isolating a child, or
9 causing the child to witness domestic violence.
10 (3) A chronic pattern of emotional abuse can lead to adverse
11 effects such as borderline personality disorder, eating disorders,
12 substance abuse, aggression or criminality, learning impairments,
13 and low academic achievement.
14 (4) Emotional abuse can be difficult to recognize, and often
15 goes unseen or, when noticed, inadequately addressed. Although
16 certain cases of emotional abuse are criminal under existing law,
17 they can be difficult to prosecute.
18 (b) It is the intent of the Legislature to provide an adequate
19 definition of emotional abuse in order to facilitate the prosecution
20 of cases of emotional abuse; to ensure that emotional abuse of a
21 child is considered by the court in custody proceedings; and to
22 encourage the development of local law enforcement programs to



1 address the needs of children exposed to domestic violence or
2 other violent crime.

3 SEC. 2. Section 3044 of the Family Code is amended to read:

4 3044. (a) Upon a finding by the court that a party seeking
5 custody of a child has perpetrated domestic violence against the
6 other party seeking custody of the child or against the child or the
7 child's siblings, *or has perpetrated emotional abuse against the*
8 *child or the child's siblings*, within the previous five years, there
9 is a rebuttable presumption that an award of sole or joint physical
10 or legal custody of a child to a person who has perpetrated
11 domestic violence *or emotional abuse* is detrimental to the best
12 interest of the child, pursuant to Section 3011. This presumption
13 may only be rebutted by a preponderance of the evidence.

14 (b) In determining whether the presumption set forth in
15 subdivision (a) has been overcome, the court shall consider all of
16 the following factors:

17 (1) Whether the perpetrator of domestic violence *or emotional*
18 *abuse* has demonstrated that giving sole or joint physical or legal
19 custody of a child to the perpetrator is in the best interest of the
20 child.

21 (2) Whether the perpetrator has successfully completed a
22 batterer's treatment program that meets the criteria outlined in
23 subdivision (c) of Section 1203.097 of the Penal Code.

24 (3) Whether the perpetrator has successfully completed a
25 program of alcohol or drug abuse counseling if the court
26 determines that counseling is appropriate.

27 (4) Whether the perpetrator has successfully completed a
28 parenting class if the court determines the class to be appropriate.

29 (5) If the perpetrator is on probation or parole, whether he or
30 she is restrained by a protective order granted after a hearing, and
31 whether he or she has complied with its terms and conditions.

32 (6) Whether the perpetrator of domestic violence *or emotional*
33 *abuse* has committed any further acts of domestic violence.

34 (c) In cases in which both parents are perpetrators of domestic
35 violence *or emotional abuse*, this presumption shall not be
36 applicable.

37 (d) For purposes of this section, a person has "perpetrated
38 domestic violence" when he or she is found by the court to have
39 intentionally or recklessly caused or attempted to cause bodily
40 injury, or sexual assault, or to have placed a person in reasonable

1 apprehension of imminent serious bodily injury to that person or
2 to another, or to have engaged in any behavior involving, but not
3 limited to, threatening, striking, harassing, destroying personal
4 property or disturbing the peace of another, for which a court may
5 issue an exparte order pursuant to Section 6320 to protect the other
6 party seeking custody of the child or to protect the child and the
7 child's siblings.

8 *(e) For purposes of this section, a person has "perpetrated*
9 *emotional abuse" when he or she is found by the court to have*
10 *caused or permitted a child to suffer, or to have inflicted upon a*
11 *child, unjustifiable mental suffering.*

12 SEC. 3. Section 273a of the Penal Code is amended to read:

13 273a. (a) Any person who, under circumstances or
14 conditions likely to produce great bodily harm or death, willfully
15 causes or permits any child to suffer, or inflicts thereon
16 unjustifiable physical pain or mental suffering, or having the care
17 or custody of any child, willfully causes or permits the person or
18 health of that child to be injured, or willfully causes or permits that
19 child to be placed in a situation where his or her person or health
20 is endangered, shall be punished by imprisonment in a county jail
21 not exceeding one year, or in the state prison for two, four, or six
22 years.

23 (b) Any person who, under circumstances or conditions other
24 than those likely to produce great bodily harm or death, willfully
25 causes or permits any child to suffer, or inflicts ~~thereon~~ *upon a*
26 *child*, unjustifiable physical pain or mental suffering, or having the
27 care or custody of any child, willfully causes or permits the person
28 or health of that child to be injured, or willfully causes or permits
29 that child to be placed in a situation where his or her person or
30 health may be endangered, is guilty of a misdemeanor.

31 (c) *Any person who willfully causes or permits a child to suffer,*
32 *or inflicts upon a child, unjustifiable mental suffering commits a*
33 *violation of this section regardless of whether the act or acts*
34 *causing, permitting, or inflicting the mental suffering also cause*
35 *physical injury or harm to the child.*

36 (d) If a person is convicted of violating this section and
37 probation is granted, the court shall require the following
38 minimum conditions of probation:

39 (1) A mandatory minimum period of probation of 48 months.

(2) A criminal court protective order protecting the victim from further acts of violence or threats, and, if appropriate, residence exclusion or stay-away conditions.

(3) (A) Successful completion of no less than one year of a child abuser's treatment counseling program approved by the probation department. The defendant shall be ordered to begin participation in the program immediately upon the grant of probation. The counseling program shall meet the criteria specified in Section 273.1. The defendant shall produce documentation of program enrollment to the court within 30 days of enrollment, along with quarterly progress reports.

(B) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term provided in subdivision (a) of Section 1203.1. If the court finds that the defendant does not have the ability to pay the fees based on the defendant's changed circumstances, the court may reduce or waive the fees.

(4) If the offense was committed while the defendant was under the influence of drugs or alcohol, the defendant shall abstain from the use of drugs or alcohol during the period of probation and shall be subject to random drug testing by his or her probation officer.

(5) The court may waive any of the above minimum conditions of probation upon a finding that the condition would not be in the best interests of justice. The court shall state on the record its reasons for any waiver.

SEC. 4. Title 10.5a (commencing with Section 14145) is added to Part 4 of the Penal Code, to read:

TITLE 10.5a. CHILD ABUSE PREVENTION

14145. Local law enforcement agencies are encouraged to develop projects of collaboration between law enforcement officers and mental health professionals in order to address the needs of children and families exposed to violence. These projects may pair law enforcement officers with mental health professionals, and may offer training to these teams to help them assess the psychological needs of families in crisis in order to provide immediate, informed intervention. The mental health professionals may, with their law enforcement team members,

1 respond to emergency calls where children have been exposed to
2 domestic violence, serious accidents, violent crime, or any other
3 traumatic event. The mental health professionalism may offer
4 immediate assistance to the children at the time of the call, and the
5 team may make appropriate referrals to community resources,
6 such as counseling and medical services, in order to assist the
7 children in recovering from the trauma.
8 Any collaboration project shall be funded using grant funding,
9 as available, or available resources within the existing budget of
10 the law enforcement agency.

